1	☐ EXPEDITE X No Hearing Set		
2	☐ Hearing is Set Date:		
3	Time:		
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5		The Honorable Christine A. Pomeroy	
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7	IN THE SUPERIOR COURT OF T	HE STATE OF WASHINGTON	
8	IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON IN AND FOR THE COUNTY OF THURSTON		
9	STATE OF WASHINGTON,	NO. 10-2-00884-2	
10	Plaintiff,		
11	v.	CONSENT JUDGMENT	
12	CREDEXX CORPORATION, a California corporation, d/b/a Auto One Warranty	(CLERK'S ACTION REQUIRED)	
13	Specialists; and DAVID J. TABB , an individual,		
14	Defendants.		
15	D'OTOTALITES.		
16	I. JUDGMENT SUMMARY		
17	Judgment Creditor:	State of Washington	
18	Judgment Debtor:	Credexx Corporation and David J. Tabb	
19	Principal Judgment Amount: a. Civil Penalties:	\$70,000 (\$70,000 suspended per	
20	b. Costs and Attorney Fees:	paragraphs 6.2) \$ 5,000	
21	Total Judgment:	\$ 5,000	
22	Post Judgment Interest Rate:	12% per annum	
23	Attorneys for Judgment Creditor:	Mary C. Lobdell	
24	rmorneys for suagment Creation.	Assistant Attorney General	
25	Attorney for Judgment Debtors:	Shane Stafford, Esq.	
26		Shanberg Stafford, LLP	
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- 1.1 Plaintiff, State of Washington, commenced this action on April 29, 2010, pursuant to the Unfair Business Practices Consumer Protection Act ("Consumer Protection Act"), chapter 19.86 RCW; chapter 80.36 RCW Automatic Announcing and Dialing Devices Act; and chapter 19.158 Commercial Telephone Solicitation Act.
- 1.2 Plaintiff is appearing by and through its attorneys Robert M. McKenna, Attorney General, and Mary C. Lobdell, Assistant Attorney General. Defendants Credexx Corporation and David J. Tabb, an individual, are appearing by and through their attorneys, Shane Stafford, Esq., of Shanberg Stafford, LLP and local counsel, Nathan L. Kortokrax.
- 1.3 The State of Washington and the Defendants have agreed on a basis for settlement of the matters alleged in the Complaint, and to the entry of this Consent Judgment against the Defendants without the need for trial or adjudication of any issue of law or fact.
- 1.4 The State of Washington and Defendants agree that this Consent Judgment does not constitute evidence or an admission regarding the existence or non-existence of any issue, fact, or violation of any law alleged by Plaintiff.
- 1.5 Defendants recognize and state that this Consent Judgment is entered into voluntarily and that no promises or threats have been made by the Attorney General's Office or any member, officer, agent or representative thereof to induce it to enter into this Consent Judgment, except as provided herein.
- 1.6 Defendants waive any right they may have to appeal from this Consent Judgment.
- 1.7 Defendants agree that they will not oppose the entry of this Consent Judgment on the grounds the Consent Judgment fails to comply with Rule 65(d) of the Rules of Civil

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Procedure, and hereby waives any objection based thereon.

1.8 Defendants further agree that this Court shall retain jurisdiction of this action for the purpose of implementing and enforcing the terms and conditions of the Consent Judgment and for all other purposes; and

The Court finding no just reason for delay;

NOW, THEREFORE, it is hereby ORDERED, ADJUDGED, AND DECREED as follows:

II. GENERAL

- 2.1 <u>Jurisdiction</u>. This Court has jurisdiction of the subject matter of this action and of the parties. The Plaintiff's Complaint in this matter makes claims under the provisions of the Unfair Business Practices Consumer Protection Act, chapter 19.86 RCW; chapter 80.36 RCW Automatic Announcing and Dialing Devices Act; and chapter 19.158 Commercial Telephone Solicitation Act.
- 2.2 <u>Defendants</u>. For purposes of this Consent Judgment the term "Defendants," where not otherwise specified, shall mean Credexx Corporation dba Auto One Warranty Specialists and David J. Tabb, jointly or severally, whether operating under their own names or any other business names, their agents, servants, representatives, sales persons, employees, independent contractors, affiliates, successors and assigns, and all persons acting in concert or participation with either of them, directly or indirectly, or acting on behalf of any Defendant or at their direction, through any corporate device, partnership or association, jointly and severally, including all persons and entities that receive notice of this Judgment.

- 2.3 For purposes of this Judgment, "service contract" or "motor vehicle service contract" means a contract or agreement: (a) that contains a separately stated consideration or a specific duration to perform the repair, replacement or maintenance of a motor vehicle and includes vehicle protection products; or (b) that provides indemnification for repair, replacement or maintenance of a motor vehicle due to an operational or structural defect in materials, workmanship or normal wear and tear; and (c) may or may not include additional provision for incidental payment of indemnity under limited circumstances, including but not limited to, towing, rental and emergency road service.
- **2.4** For purposes of this Judgment, a "person" shall include natural persons, corporations, trust, unincorporated associations, limited liability companies, partnerships, sole proprietorships and any other entity.
- 2.5 For purposes of this Judgment, "trade or commerce" shall mean the sale of assets or services and any commerce directly or indirectly affecting the people of the state of Washington as that term is defined in RCW 19.86.010.
- 2.6 For purposes of this Judgment, an "authorized telemarketer" or "telemarketer" means a business or other entity that conducts telemarketing or generates leads on Defendants' behalf in connection with the offer or sale of vehicle service contracts or other products and includes all definitions found in Washington State or federal law.
- 2.7 For purposes of this Judgment, "telemarketing" or "telephone solicitation" means any telephone call or message for the purpose of encouraging or inducing the purchase of goods or services and includes any definition provided by federal, state or local law. Nothing in this Judgment affects, limits, waives or alters the definition of "telemarketing"

under state or federal law or limits the authority of the Attorney General to enforce applicable federal and state statutes.

2.8 For purposes of this Judgment, "spoofing" means using any means to block, disguise or falsify the identity of the caller.

III. REPRESENTATIONS AND WARRANTIES

- 3.1 Defendants warrant and represent that they and their predecessors, successors and assigns were engaged in the business of marketing, selling and promoting the sales of motor vehicle service contracts to consumers. Defendants further acknowledge that they are the proper parties to this Judgment. Defendants warrant and represent that the individual(s) signing this Judgment on behalf of Defendants is doing so in his or her corporate capacity and individual capacity and is fully authorized to enter into this Judgment and to legally bind each Defendant to all of the terms, conditions and injunctions of this Judgment.
- 3.2 Defendants warrant and represent that they negotiated the terms of this Judgment in good faith.

IV. ALLEGED VIOLATIONS

The State of Washington alleges that Defendants violated chapter 19.86 RCW, 80.36 RCW, 19.158 RCW and applicable federal statutes and rules by selling and marketing motor vehicle service contracts to Washington consumers in a false, deceptive and misleading manner, including but not limited to the following:

4.1 Representing that a consumer's motor vehicle warranty expired, is expiring or is about to expire when such statement is not true or cannot be substantiated.

- 4.2 Representing or implying that a consumer's vehicle may be unsafe or subject to recall, when such is not the case or is not known.
- **4.3** Misrepresenting the nature of the motor vehicle service contract as a "warranty," "factory warranty" or "extended warranty," when the product being sold is not a "warranty," "factory warranty" or "extended warranty".
- **4.4** Representing that Defendants have a preexisting relationship with a consumer when such a relationship does not exist.
- 4.5 Representing or implying to a consumer that a solicitation is a final or limited time offer when such is not or was not the case.
- **4.6** Representing or implying to a consumer that a solicitation is a final offer when the offer was never previously made to the same consumer.
- **4.7** Creating a false sense of urgency that an offer will expire when no actual expiration date for the offer exists.
- 4.8 Representing to a consumer that the offer is "exclusive" when such is not the case.
- **4.9** Creating confusion in consumers as to the source, sponsorship, approval or certification of the service contracts offered by Defendants, including misrepresenting or causing confusion that Defendant Credexx is the company with which consumers had their original motor vehicle warranty.
- **4.10** Representing or implying an affiliation, connection or association with, or certification by a third party, such as a manufacturer, government agency or other entity, when Defendants have no such relationship with the third party.

- **4.11** Misrepresenting or implying that the service contracts Defendants sell or offer have uses, benefits, standards, grades or qualities that they do not have.
- **4.12** Failing to disclose all material terms of a service contract offer in solicitations and marketing contacts with consumers.
- 4.13 Refusing to allow a consumer an opportunity to review the complete written service contract agreement upon request.
- **4.14** Misleading consumers as to the nature of Defendants' relationship with the service contract provider.
- 4.15 Engaging in violations of state and federal do-not-call laws by failing to scrub telephone numbers, making calls to consumers on state and federal do-not-call lists, making calls to cell phones, failing to transmit caller identification information, spoofing, failing to register as a telemarketer and failing or refusing to place consumers on internal do-not call lists upon the consumer's request.
- 4.16 Engaging in violations of state and federal laws in the use of automatic dialing and announcing devices (ADAD) and state and federal do-not-call laws and the Telephone Consumer Protection Act (TCPA), 47 U.S.C. § 227 et seq., including, but not limited to, placing calls into the state of Washington in which such calls are prohibited for commercial purposes, calling cell phones, emergency lines and hospitals, spoofing, using such devices in violation of state and federal do-not-call laws and using such devices in a manner that the consumer is unable to place his or her phone number on an internal do-not-call list.
- 4.17 Providing false or misleading caller identification information, including preventing the display of caller identification, using methods that bypass, circumvent, or

disable caller identification, or using methods that mislead the caller as to the identification of the caller or the caller's phone number.

- **4.18** Selling or offering for sale, service contracts in violation of state licensing or registration laws, including the licensing or registration of Defendant Credexx as a marketer, as licensed or registered sales staff, and the licensing or registration of the motor vehicle service contracts sold by Defendants.
- **4.19** Engaging in a pattern or practice of failing to provide prompt refunds to consumers, issuing refunds that were less than the amount required by contract or state law, denying valid refunds and/or failing to pay valid refunds.
- 4.20 Obtaining, directly or indirectly, consumers' personal information as that term is defined in the Drivers' Privacy Protection Act (DPPA), 18 U.S.C. § 2721 et seq., from a state department of motor vehicle without the express consent of the person to whom such personal information pertains, in violation of the DPPA; and
- **4.21** Obtaining, directly or indirectly, consumers' credit information without using that information for a permissible purpose within the meaning of the Fair Credit Reporting Act (FCRA), 15 U.S.C. § 1681, *et seq.*
- 4.22 The Plaintiff alleges that Defendant Tabb (a) participated personally in the design, establishment, and approval of Defendant Credexx' advertising, marketing and sales practices; (b) established and implemented Credexx' refund policies and practices; (c) hired and fired sales personnel and other representatives of Credexx whom Defendant Tabb directed to and who did carry out Credexx' advertising, marketing and sales practices; and (d) trained, directed and oversaw sales personnel and other representatives of Credexx.

V. JUDGMENT INJUNCTIVE PROVISIONS

IT IS ORDERED, ADJUDGED AND DECREED THAT:

Pursuant to Washington Code 19.86, Defendants, individually and any officers, directors, employees, agents, attorneys, successors, assigns and all other persons acting on behalf of either Defendant or at either Defendant's direction and who have actual or constructive notice of this order, are hereby permanently **RESTRAINED** and **ENJOINED** and **ORDERED TO CEASE AND DESIST** from engaging in any of the following conduct that affects the people of the state of Washington:

- **5.1** Engaging in any telemarketing sales, telephone solicitation or acting as an authorized telemarketer;
- 5.2 Engaging in any trade or commerce in Washington without express written consent by the Washington Attorney General;
- 5.3 Engaging in any act associated with the trade or commerce of a service contract, including but not limited to, engaging in marketing, sale or financing of any service contract or acting as an obligor, backer or risk retention group related to or associated with service contracts;
- 5.4 Violating RCW 19.86, the Consumer Protection Act Unfair Business Practices; and
 - **5.5** Engaging in the practices alleged in Section IV.
- **5.6** Nothing in this section, however, prevents Defendant Tabb from purchasing or selling real property for personal, family or household purposes or engaging in any trade or commerce that is solely for personal, family or household purposes.

The injunctive provisions contained in this Section V shall not expire.

VI. PAYMENT TO THE STATE

- 6.1 Pursuant to RCW 19.86.140, Plaintiff shall recover and Defendants shall pay civil penalties in the amount of \$70,000 under terms as set forth below.
- 6.2 Civil penalties under Section 6.1 shall be suspended contingent on Defendants' full compliance with the terms of this Judgment. Civil penalties are to or for a governmental unit and are not for pecuniary loss.
- 6.3 Upon execution of the Consent Judgment, Defendants shall pay to the Plaintiff the sum of five thousand dollars (\$5,000) for attorneys' fees and costs. A payment of \$1,000 is due within thirty-days (30) of entry of this Judgment by a court of law. Monthly payments shall be made thereafter due on the 15th day of the month in the amount of \$300 for the next thirteen (13) consecutive months with a final payment of \$100 in the fourteenth (14) month.
- 6.4 No post-judgment interest shall accrue on the unpaid balance as long as the payments made in paragraph 6.3 are current.
- 6.5 All payments due under this Judgment shall be by cashier's check made payable to the order of the "Attorney General-State of Washington" and sent to the Office of the Attorney General, Attention: Cynthia Lockridge, Administrative Office Manager, 800 Fifth Avenue, Suite 2000, Seattle, Washington, 98104-3188.
- 6.6 Should the Defendants fail to timely make any payment as provided in paragraph 6.3, interest shall accrue on that payment and all subsequent payments at the statutory judgment interest rate.

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- **6.7** Failure to make any payment when due shall be construed as a violation of this Judgment.
- 6.8 Should the Defendants fail to make any payment within 14 days of its due date as provided in paragraph 6.3, the Plaintiff may declare the Defendants in default of this Judgment and, after ten (10) days notice to the Defendants, may enter an Amended Judgment in the amount of \$70,000, plus any unpaid balance and interest due on the \$5,000 payable to the State of Washington. Any notice to Defendants provided under this paragraph shall be made by mailing such notice, first class mail, to the following persons(s) designated by Defendants:

Shane Stafford Shanberg Stafford, LLP 19200 Von Karman Avenue, Ste. 400 Irvine, CA 92612

- 6.9 Interest shall accrue on any Amended Judgment at the statutory judgment rate.
- 6.10 If a court determines that Defendants violated this Judgment, that the financial Statements provided by Defendants during the course of this litigation were inaccurate or otherwise misleading, or an Amended Judgment is entered, Defendants shall pay the Civil Penalty in full via a cashier's check within three (3) business days of entry of the Court's order or entry of the Amended Judgment by the Clerk into the Judgment docket.
- **6.11** Defendants' obligation to pay the suspended penalty shall be in addition to any other monetary or other sanctions that may be imposed for violation of the injunctive provisions of section V of this Consent Judgment.
- **6.12** Defendants shall be jointly and severally liable for all amounts that are due and owing under this Consent Judgment.

6.13 If any Defendant makes an assignment for the benefit of its or his creditors, files, or has filed against it or him, any proceedings under any reorganization, bankruptcy code, receivership or similar law, is adjudicated bankrupt, then any unpaid portion of the Fees and Costs due under paragraph 6.3 shall become due and payable without notice.

VII. COMPLIANCE

- 7.1 Efforts to Comply with Judgment. Defendants shall not sell, offer to sell or provide to anyone any materials that would enable any other person or business to engage in any act or practice that would violate this Judgment were it committed directly by Defendants. Defendants shall not direct, train, instruct or induce any person to perform or refrain from performing any act or engage or refrain from engaging in any practice that is prohibited or required by this Judgment.
- 7.2 Other Business Names. Defendants shall not use an assumed business name, logo or other mark that is false, deceptive or misleading as to the nature of the goods or services it sells or offers to sell or that Defendants otherwise use in its affiliations with others.

VIII. NOTICE

- 8.1 <u>Notice of Violations</u>. All owners, officers, directors, agents, servants, employees, salespersons, representatives and other persons who receive notice of this Judgment are on notice that the activities outlined in Section V of this Judgment constitute violations of chapter 19.86 RCW, RCW 80.36, RCW 19.158 or federal laws.
- 8.2 <u>Notice to Defendants</u>. The mailing of a copy of this signed and filed Judgment to Defendants or to Defendants' attorney shall constitute notice and acceptance by Defendants of all the terms of this Judgment. Defendants waive their right to have a copy of this Judgment

served upon them. Furthermore, Defendants waive any requirement that this Judgment include findings of fact and conclusions of law.

IX. MISCELLANEOUS

- 9.1 Pursuant to RCW 19.86.140, any violation of the terms of this Consent Judgment shall form the basis for further enforcement proceedings, including but not limited to, contempt of Court proceedings, forfeiture, modification or clarification of this Consent Judgment or a civil penalty of up to \$25,000 for each violation of any injunctive terms of this Consent Judgment committed after the date of this Judgment.
- 9.2 Jurisdiction is retained for the purpose of enabling Plaintiff to apply to the Court at any time to enforce compliance, to modify the terms of this Judgment or to request that any suspended penalty be entered into the judgment docket upon notice to the Defendants and upon an offer of proof that the Defendants have violated any injunctive provision in this Judgment.
- 9.3 Defendants specifically warrant that this Consent Judgment is executed upon the Plaintiff's reliance upon Defendants' financial statements and representations related to Defendants' financial condition made during this course of this litigation.
- 9.4 Defendants acknowledge that representatives of the Office of the Attorney General shall be permitted, under the Consumer Protection Act, to access, inspect and/or copy, all business records or documents under control of Defendants and depose any officer, director, agent, or employee of Defendants, in order to monitor compliance with this Consent Judgment, provided that the inspection and copying shall be done in such a way as to avoid disruption of Defendants' business activities, and all shall be subject to a ten (10) day notice.

- 9.5 Nothing in this Consent Judgment shall be construed as to limit or bar any consumer from pursuing other available remedies against Defendants.
- 9.6 In any action to enforce the terms of this Consent Judgment, Plaintiff may seek additional remedies, including, but not limited to, restitution, injunctive relief, and reasonable attorneys' fees and costs, in addition to any other remedies permitted by law.
- 9.7 Defendants agree to waive their right to contest all matters of jurisdiction if the State enforces the terms of this Consent Judgment.
- 9.8 Any signature required to effectuate all or any part of this document, may be executed by the parties in counterparts, each of which signatures shall be deemed an original, and any such document executed in counterparts shall have the same effect and authority. One or more counterparts of this Consent Judgment may be delivered by facsimile or electronic transmission with the intent that it or they shall constitute an original counterpart hereof.
- 9.9 Under no circumstances shall this Consent Judgment or the name of the state of Washington, the Office of the Attorney General, Consumer Protection Division, or any of their employees or representatives be used by Defendants in connection with any selling, advertising, or promotion of products or services, or as an endorsement or approval of Defendants' acts, practices or conduct of business.
- 9.10 This proceeding in all other respects is hereby dismissed with respect to Credexx Corporation and David J. Tabb.

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1	9.11 This Consent Judgment is ento	ered pursuant to RCW 19.86.080.
2		2011
3	DONE IN OPEN COURT this	day of February 2011.
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6		JUDGE
7	1 C 1 manufal have	Approved For Entry, Notice of Presentation
8	Approved for entry and presented by:	Waived:
9	ROBERT M. MCKENNA	SHANBERG STAFFORD, LLP
10	Attorney General	
11	May (14 Stroll)	May 1 FE 3/4/4
12	MARY/C. LOBDELL DATED	SHANE STAFFORD DATED
13	WSBA #17930 Assistant Attorney General	Attorney for Defendants, Credexx Corporation and David J. Tabb
14	Attorneys for Plaintiff State of Washington	
15		and the property of the proper
16		TAYLOR LAW GROUP, P.S.
17		
18		NATHAN L. KORTOKRAX DATED
19		WSBA #38555 Local Counsel for Defendants
20		Credexx Corporation and David J. Tabb
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22		- D38 Pm
23		DAVID & TABB President-Credexx Corporation
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1	9.11 This Consent Judgment is en	tered pursuant to RCW 19.86.080.
2		L S.F.shamarra 2011
3	DONE IN OPEN COURT this day of February 2011.	
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6		JUDGE
7	Approved for entry and presented by:	Approved For Entry, Notice of Presentation
8	Approved for entry and presented by:	Waived:
9	ROBERT M. MCKENNA	SHANBERG STAFFORD, LLP
10	Attorney General	
11		
12	MARY C. LOBDELL DATED	SHANE STAFFORD DATED
13	WSBA #17930	Attorney for Defendants, Credexx Corporation and David J. Tabb
14	Assistant Attorney General Attorneys for Plaintiff State of Washington	
15	State of Washington	
16		TAYLOR LAW GROUP, P.S.
17		March Sul
18		NATHAN L. KORTOKRAX DATED
19		WSBA #38555 Local Counsel for Defendants
20		Credexx Corporation and David J. Tabb
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23		DAVID J. TABB President-Credexx Corporation
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